IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

WP(C).No. 5174 of 2007(N)

PETITIONER:

V.K. SHAJI, LIBRARIAN,
MALAYATTOR-NEELESHWARAM GRAMA PANCHAYATH
RESIDING AT VATTAPARA HOUSE,
NEELESHWARAM P.O., VIA KALADY, ERNAKULAM.

BY ADV. SRI.S.RAMESH BABU

RESPONDENTS:

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1. **THE MALAYATOOR NEELESWARAM GRAMA PANCHAYATH REPRESENTED BY ITS SECRETARY, PANCHAYAT OFFICE, NEELESWARAM.**

2. **THE PRESIDENT, MALAYATOOR NEELESWARAM GRAMA PANCHAYATH, PANCHAYATH OFFICE, NEELESWARAM P.O.**

BY ADV. SMT.REKHA C.NAIR
BY GOVERNMENT PLEADER SRI.P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.5174/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE REPORT DT.15.9.06.

EXT.P2:- COPY OF THE REPLY DT.27.9.06.

EXT.P3:- COPY OF THE ORDER DT. 6.11.06.

EXT.P4:- COPY OF THE JUDGMENT DT.29.11.06.

EXT.P5:- COPY OF THE ORDER IN THE REVIEW PETITION DT.12.1.2007.

EXT.P6:- COPY OF THE JUDGMENT DT.12.1.07.

EXT.P7:- COPY OF THE REPRESENTATION DT.2.2.07.

EXT.P8:- COPY OF THE MEMO OF CHARGES DT.12.207.

EXT.P9:- COPY OF THE SUSPENSION ORDER DT.12.2.07.

/TRUE COPY/

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K.K. DENESAN, J.

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W.P.(C) No. 5174 OF 2007 N
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Dated this the 20th February, 2007

J U D G M E N T

The petitioner was appointed as Part-time Librarian after due selection and interview by the respondent-Panchayat. According to the Panchayat, the appointment of the petitioner as Part-time Librarian was on honorary basis. On 6-11-2007 the respondent-Panchayat terminated the service of the petitioner alleging commissions and omissions on his part in the discharge of his duties. Though dereliction of duty was specifically imputed against the petitioner, the order of termination was passed without affording him an opportunity of being heard and without conducting any enquiry. This Court set aside the order terminating the service of the petitioner as per Ext. P4 judgment dated 29-11-2006. The respondent-Panchayat filed a review petition stating that contentions raised on behalf of the Panchayat could not be urged at the time of hearing of the case and the Panchayat shall be afforded an opportunity of being heard after setting aside Ext. P4 judgment. The review petition was heard

and taking the view that the Panchayat shall be afforded one more opportunity, Ext. P4 judgment was recalled. The review petition was disposed of vide Ext. P5 order dated 12-1-2007. In paragraph 3 of that order this Court held as follows:

> "It is unnecessary for this Court to say anything with respect to the averments made by the second respondent about the alleged lapses on the part of the counsel. I need only state that if the facts thus stated are correct, it is valid ground to review the judgment."

Accordingly Ext. P4 judgment was reviewed. Thereafter, the petitioner as well as the Panchayat was heard and this Court rendered Ext. P6 judgment. It was found that the order terminating the service of the petitioner was passed without affording reasonable opportunity to him and therefore that order was liable to be set aside. This Court expressed the view that the Panchayat will be free to frame charges against the petitioner, in which event, it shall afford reasonable opportunity to the petitioner to defend the charges, as enjoined by law. Since the order terminating the service of the petitioner was set aside this Court held that the petitioner shall be deemed to be in service. The above judgment was rendered on 12-1-2007. None

filed appeal against that judgment and the same became final.

2. It is the case of the petitioner that the respondent-Panchayat did not reinstate the petitioner in service, nor disbursed any amount towards emoluments. On the other hand, the Panchayat served on the petitioner Ext. P8 memo of charges and Ext. P9 order of suspension. Feeling aggrieved, this writ petition has been filed.

3. Learned counsel for the petitioner submits that the petitioner will file written statement of defence in answer to the allegations contained in Ext. P8 memo of charges and that the petitioner does not press for interference with Ext. P8 order in this writ petition at this stage. However, the petitioner has got serious grievance against Ext. P9 order passed on 12-2-2007. It is contended that though the President of the respondent-Panchayat has got the power to place any employee or officer over whom the President has got control or supervision and to place such employee or officer under suspension, the same shall conform to the rules framed by the Government, namely, the Kerala Panchayat Raj (Control Over Officers) Rules, 1997,

particularly Rule 8(1) thereof which reads as follows:

> "8(1). If the President is prima facie satisfied that an employee of the Panchayat referred to in Section 180, a Government Officer or employee of subordinate service whose service has been lent to the Panchayat has committed an offence of serious nature, includes misconduct or deserves major penalty, and allowing him to continue in service is against public interest and will obstruct the enquiry being conducted or intending to conduct against him, he may suspend such employee from service subject to detailed enquiry and disciplinary proceeding."

It is further contended that the sub-rule (2) of Rule 8 insists that the concerned employee shall be entitled to subsistence allowance under Rule 55, Part I of the Kerala Service Rules, 1959, during the period of suspension. Ext. P9 order does not say even a single word about the payment of subsistence allowance to the petitioner. No other order has been passed by the respondent-Panchayat granting subsistence allowance to the petitioner.

4. The 1st respondent-Panchayat has filed counter affidavit. It is contended that the petitioner is guilty of serious allegations and the impugned order was passed in exercise of the power conferred on the President under Section 156 (6)(b) of the Kerala

Panchayat Raj Act. It is also contended that the Panchayat is justified in placing the petitioner under suspension and that the order thus passed does not warrant interference by this Court.

5. Counsel for the petitioner submits that three conditions shall be cumulatively satisfied for placing an employee or officer under suspension by the President of the Panchayat, namely, that the employee has committed an offence of serious nature, that allowing him to continue in service is against public interest and that he will obstruct the enquiry being conducted or intending to be conducted against him. In Ext. P9 there is no recital to the effect that the petitioner will obstruct the enquiry, if any, intending to be conducted against him. It is, therefore, submitted that the President was not satisfied while issuing the impugned order of suspension that the petitioner will obstruct the enquiry being conducted or intending to be conducted against him. Since such a satisfaction was not there the President did not exercise the power vested in him as required by law and there is non-compliance of the mandatory requirement or condition laid down by Rule 8(1) of the aforesaid

rules.

6. Counsel for the 1st respondent submits that though the aforesaid three conditions shall be cumulatively satisfied by the President before placing an employee under suspension, it is not mandatory that all those conditions shall be recited in the order of suspension. According to the counsel, the rule does not insist that the order of suspension should specifically state that the aforesaid conditions do exist. It is also contended that the petitioner is not a person whose case comes within the purview of Rule 8 of the aforesaid rules and that the impugned order was passed by the President in exercise of the power conferred under Section 156(6) of the Kerala Panchayat Raj Act. According to the respondent, the petitioner has not submitted his written statement of defence and it is open to him to file his written statement of defence within the time permitted by the Panchayat. Counsel further submits that the petitioner has got a remedy to approach the Panchayat by filing a representation against Ext. P9 and he shall be relegated to such remedy by this Court. Counsel for the 1st respondent places reliance on the judgment of

the Division Bench of this Court in ***Director of Panchayats v. Krishnan*** {2001 (2) KLT 286}.

7. The aforesaid decision cited by the counsel for the 1st respondent dealt with a question relating to the power of the President of the Panchayat to place a non-gazetted government servant allotted to the Panchayat under suspension. The Division Bench had no occasion to consider the validity of an order of suspension passed under Rule 8 of the aforesaid rules in relation to the conditions referred to there. Of course, it was observed in the above judgment that Rule 8 enables the President of the Panchayat to keep an officer under suspension. Therefore, the question came up for consideration before the Division Bench was one relating to the very jurisdiction of the President of the Panchayat to place an employee under suspension. In that context the Division Bench considered the effect of Section 156(6)(b) of the Kerala Panchayat Raj Act as also Rule 8 of the Kerala Panchayat Raj (Control Over Officers) Rules, 1997. The question that is posed for consideration in this case is different. The petitioner does not question the authority of the President of the Panchayat to place under suspension an

employee or officer of the Panchayat or a person placed in the position of the petitioner. His contention is that, having exercised the jurisdiction conferred on the President under the Act and the Rules, the President had the duty to pass an order as enjoined by Rule 8 and if that has not been done, the order is invalid. No doubt, the impugned order does not contain a recital to the effect that all the three conditions referred to in Rule 8 were in existence or that the President of the Panchayat was satisfied that those conditions were in existence. Is it necessary that the President shall say in the order of suspension that he was satisfied that the aforesaid conditions were in existence? The Panchayat has no case that there is material to show that the President was satisfied about the existence of the three conditions. A reading of Exts. P8 and P9 will show that the President was of the view that the allegations against the petitioner were serious in nature. But nowhere it is stated that placing the petitioner under suspension was necessary in public interest, and further, that there was likelihood of the petitioner causing obstruction in the conduct of the enquiry or the enquiry intended to

be conducted. Even assuming that it is not mandatory that these conditions should be specifically mentioned in the order of suspension, it is mandatory that the materials on record must show that the President had applied his mind to the aforesaid aspects and only on such satisfaction, he had passed the impugned order. The mere averment made in the counter affidavit filed in this case that the President had in his mind all these elements will not suffice. An after thought assertion that the President had all the three vital aspects in his mind when he passed the impugned order will not suffice. He will have to establish, based on materials available on record as on the date of passing the impugned order that he did apply his mind to these conditions and on being satisfied that the cumulative effect of these conditions warranted the order of suspension, he passed the order of suspension. Such materials are lacking. I am, therefore, of the view that the contention of the petitioner on the score of Rule 8 is to be accepted.

8. Though it is contended that the petitioner has got a statutory remedy of appeal, as rightly argued by counsel for the petitioner, the remedy provided by the

Rules is to file appeal against orders imposing penalty and not against orders of suspension. At any rate, counsel appearing for the parties have not brought to my notice any statutory provision which provides the remedy of appeal against an order of suspension. The mere fact that the Division Bench had observed in the decision cited supra that the petitioner therein can file objections and in the event of any such objection being filed the same will be considered by the Panchayat cannot be equated to a situation where every employee placed under suspension is assured or guaranteed that a representation filed by him will be considered as though it is an appeal filed pursuant to a provision of law enabling the employee concerned to file an appeal. The representation filed may or may not be considered. There is no duty cast on the respondent to consider representation filed by the employee against the order of suspension. Therefore, the petitioner cannot be found fault with, for not filing any representation before the Panchayat. Counsel for the petitioner submits that the petitioner has good and valid reasons as to why he did not approach the Panchayat. It is pointed out that the

Panchayat which hurriedly passed the order placing the petitioner under suspension did not care to implement the directions issued by this Court or did not at least do anything pursuant to this Court's order which is binding on the Panchayat also.

9. I do not propose to go into those issues because those aspects are not necessary to dispose of this writ petition.

10. In the result, Ext. P9 order of suspension is set aside. I make it clear that I have not expressed anything regarding the charges framed against the petitioner as per Ext. P8 or the defence to be set up by the petitioner in answer to those charges. The writ petition is allowed to the above extent.

K.K. DENESAN
JUDGE

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